

1 JOHN T. PHILIPSBORN, ESQ. - SBN 83944  
Law Offices of JOHN T. PHILIPSBORN  
2 507 Polk Street, Suite 350  
San Francisco, CA 94102  
3 (415) 771-3801  
jphilipsbo@aol.com  
4

5 Attorney for HENRY CERVANTES  
6  
7  
8

9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
11 OAKLAND DIVISION

12 UNITED STATES OF AMERICA, )  
13 Plaintiff, )  
14 vs. )  
15 HENRY CERVANTES, et al., )  
16 Defendants. )  
17

**Case No. 4:12-CR-00792-YGR**

**STIPULATION OF THE PARTIES  
AND ORDER FOR THE RELEASE  
UNDER SPECIFIED CONDITIONS  
OF TESTING DOCUMENTATION,  
NOTES, BOOKLETS, AND  
MATERIALS OF DR. DANIEL  
MARTELL, Ph.D.**

**Dept: The Hon. Yvonne Gonzalez  
Rogers, District Judge**

18 The Government, represented by Assistant United States Robert Rees,  
19 appearing as designated Taint Team Counsel, and Henry Cervantes, represented by  
20 John Philipsborn, hereby agree and stipulate as follows:

21 1. Mr. Rees, in his capacity as counsel for the Government for these  
22 purposes, is directed to forward a copy of this Order to Dr. Daniel Martell at his  
23 office, c/o Forensic Neuroscience Consultants, Inc., 2906 Lafayette, Newport  
24 Beach, California 92663, and Mr. Rees shall notify Dr. Martell by phone and/or  
25 email as soon as attorney Rees is aware of the stipulation and the Court's Order, so  
26 as to expedite compliance with the Court's Order.

27 2. No later than Wednesday, June 15, 2016, Dr. Daniel Martell shall  
28 make arrangements to express mail/express deliver one copy of his testing booklets,

**STIPULATION OF THE PARTIES AND ORDER FOR THE RELEASE UNDER  
SPECIFIED CONDITIONS OF TESTING DOCUMENTATION, NOTES, BOOKLETS,  
AND MATERIALS OF DR. DANIEL MARTELL, Ph.D.**

1 answer sheets, notes, interview notes, and testing documentation to Dr. Deborah  
2 Miora, 435 N. Roxbury Drive, Ste 406, Beverly Hills, California 90210, phone  
3 310-430-4609.

4 3. A second copy of the identical material shall be sent to Assistant  
5 United States Attorney Robert Rees at the Offices of the United States Attorney for  
6 the Northern District of California at 450 Golden Gate Avenue, 11<sup>th</sup> Floor, San  
7 Francisco, California 94102.

8 4. Upon receipt of testing materials from Dr. Martell, Mr. Rees shall  
9 prepare a full copy of all of Dr. Martell's forwarded documents and shall supply  
10 these to defense counsel John Philipsborn. Attorney Philipsborn is to maintain Dr.  
11 Martell's files and records in his possession, and to use and maintain the records  
12 under the terms of this Stipulation.

13 5. Pursuant to the Taint Team and firewall process agreed upon by the  
14 parties in this case, attorney Philipsborn shall have no more than 48 hours from the  
15 time of his receipt of the testing materials produced by Dr. Martell to advise AUSA  
16 Robert Rees of any objections that he may have to the scope and nature of the  
17 testing of Henry Cervantes. If such notice is tendered, the parties, represented by  
18 Mr. Rees and Mr. Philipsborn shall timely notify the Court in writing of the nature  
19 of the issues presented, and shall make themselves available to discuss the matter(s)  
20 presented with the Court. If Mr. Philipsborn determines that no objections will be  
21 made, or that any objections can be timely resolved by the Government's trial  
22 counsel, pursuant to the terms of this Stipulation and of the below appearing Order,  
23 attorney Philipsborn shall confer with Mr. Rees and shall make Dr. Martell's testing  
24 material available to the Government's trial team forthwith.

25 6. Dr. Daniel Martell's testing papers, notes, notes of interviews, testing  
26 booklets, and the like shall be maintained in strict confidence by Dr. Miora, AUSA  
27 Robert Rees, AUSA William Frentzen and the Government's trial team as well as  
28 defense lawyer Philipsborn and shall not be disseminated to anyone other than

1 experts Dr. Deborah Miora and Dr. Pablo Stewart.

2 7. In order to ensure that Dr. Martell complies with his obligations to  
3 make every attempt to preserve test confidentiality and integrity, and in order to  
4 minimize intrusion into that obligation, counsel for the parties are hereby instructed  
5 that after completion of the trial of this matter, Dr. Martell's documentation,  
6 including testing booklets, answer sheets, score sheets, and the like that are the  
7 product of copyrighted test publishers shall be destroyed, or returned to Dr. Martell.

8 8. The parties hereby acknowledge that the purpose of this stipulation is  
9 to ensure compliance with the provisions of Federal Rule of Criminal Procedure  
10 12.2(b), while at the same time attempting to accommodate concerns that licensed  
11 psychologists and neuropsychologists have about the handling of their testing and  
12 evaluation materials, as well as to preserve Mr. Cervantes's right to confidentiality  
13 of medical, psychological, and psychiatric material should he and his counsel  
14 decide to not put on a mental condition defense through an expert in this case.

15  
16 SO AGREED AND STIPULATED:

17 Dated: June 10, 2016

18 By: s/Robert Rees  
19 Robert Rees  
20 Assistant United States Attorney  
21 Counsel for The Government

22 Dated: June 10, 2016

23 By: s/John Philipsborn  
24 John Philipsborn  
25 Counsel for Henry Cervantes  
26  
27  
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

SO ORDERED.

  
THE HON. YVONNE GONZALEZ  
ROGERS, DISTRICT COURT JUDGE